

INTERSTATE BRICK

IBLA 80-212

Decided July 28, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting mining claim recordation filings for Uinta Placer Clay Nos. 1 through 10 and Buff Clay Nos. 1 through 6 and 11 through 13 mining claims.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

APPEARANCES: Harvey P. Cahoon, Vice President, Operations, Interstate Brick, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Harvey P. Cahoon, on behalf of Interstate Brick, appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated December 6, 1979, rejecting mining claim recordation filings for Uinta Placer Clay Nos. 1 through 10 and Buff Clay Nos. 1 through 6 and

11 through 13 mining claims located in sec. 26, T. 17 N., R. 120 W., sixth principal meridian, Uinta County, Wyoming.

The decision stated that the certificates of location for the claims in question were filed with the Utah State Office on October 15, 1979. The decision concluded:

In accordance with regulation 43 CFR 3833.1-2(a) the owner of an unpatented mining claim located on or before October 21, 1976, shall file on or before October 22, 1979, in the proper BLM office. The filings should be filed in the Wyoming State Office and therefore, are unacceptable. Accordingly, mining claims Uinta Placer Clay Nos. 1-10 (inclusive and Buff Clay Nos. 1-6, and 11-13, are hereby rejected.

On appeal, appellant explains that all of its claims except this group are located in Utah and that these claims were inadvertently filed in Utah. Appellant requests that it be allowed to file in BLM's Wyoming office with no penalty for late filing.

[1] Section 314(b), Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a) reads as follows:

[§] 3833.1-2 Manner of recordation – Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before Oct. 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed.

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. The "proper BLM office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states in turn that the office having jurisdiction over lands located in Wyoming is BLM's Wyoming State Office in Cheyenne. The documents had to be received and date stamped by the Wyoming State Office by October 22, 1979, in order to be filed timely. Santa Fe Nuclear, Inc., 47 IBLA 220 (1980); C. F. Linn, 45 IBLA 156 (1980). Failure to comply must result in a conclusive finding that the claim has been abandoned and is void. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ There is no information that appellant filed evidence of annual assessment work or a notice of intention to hold the mining claim as required by 43 CFR 3833.2-1(a). Failure to file the documents required by 43 CFR 3833.2-1 would also constitute an abandonment of the mining claim.

